

IN THE UNITED STATES COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

ARC'TERYX EQUIPMENT, INC., a British
Columbia corporation,

Plaintiff/Counterclaim Defendant,

vs.

WESTCOMB OUTERWEAR, INC., a
British Columbia corporation,

Defendant/Counterclaimant.

MEMORANDUM DECISION AND
ORDER DENYING PLAINTIFF'S
MOTION TO STRIKE,
CONVERTING DEFENDANT'S
MOTION FOR JUDGMENT ON THE
PLEADINGS TO A MOTION FOR
SUMMARY JUDGMENT, DENYING
DEFENDANT'S MOTION FOR
SUMMARY JUDGMENT WITHOUT
PREJUDICE, AND STRIKING
HEARING

Case No. 2:07-CV-59 TS

Plaintiff brought this action against Defendant alleging infringement of U.S. Design Patent No. 513,715 (the “715 Patent”). Defendant now brings a Motion for Judgment on the Pleadings, arguing that it is entitled to judgment because the ‘715 Patent is invalid under 35 U.S.C. §§ 102, 103, and is, therefore, unenforceable. Plaintiff seeks to strike the Declaration of Mark Galbraith filed with Defendant’s reply brief. For the reasons discussed below, the Court

will: deny the Motion to Strike, convert Defendant's Motion to one for summary judgment, deny the Motion for Summary Judgment without prejudice, and strike the November 8, 2007 hearing.

Defendant brings its Motion under Fed.R.Civ.P. 12(c). Fed.R.Civ.P. 12(c) provides:

After the pleadings are closed but within such time as not to delay the trial, any party may move for judgment on the pleadings. If, on a motion for judgment on the pleadings, matters outside the pleadings are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 56.


Here, the parties have submitted materials outside the pleadings. Thus, the Court will treat Defendant's Motion as one for summary judgment. Under Rule 12(c), the Court must give the parties a "reasonable opportunity to present all material made pertinent to such a motion by Rule 56." Because of the early stage of this litigation, the Court finds that the best way to accomplish this result is to deny Defendant's Motion for Summary Judgment without prejudice to its refiling after discovery in this matter has been completed. As a result, the hearing set for November 8, 2007, will be vacated.

It is therefore

ORDERED that Plaintiff's Motion to Strike (Docket No. 24) is DENIED. It is further ORDERED that Defendant's Motion for Judgment on the Pleadings (Docket No. 13) is converted to a Motion for Summary Judgment and is DENIED without prejudice. It is further ORDERED that the hearing set for November 8, 2007, is VACATED.

DATED November 1, 2007.

BY THE COURT:



TED STEWART
United States District Judge